

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

July 26, 2012

- I. **CALL TO ORDER** – The meeting was called to order at 1:32 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Carla Blanton; Mike Cravens; Karen Mundy; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; Lynn Roche-Phillips; and Bill Wilson. Absent were Eunice Beatty, Will Berkley, and Patrick Brewer.

Planning staff members present: Chris King, Director; Bill Sallee; Jimmy Emmons; Traci Wade; Tom Martin; Chris Taylor; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law; Tim Queary, Urban Forester; Captain Charles Bowen, Division of Fire and Emergency Services; Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve the minutes of the June 28, 2012, Planning Commission meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were requested.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, July 5, 2012, at 8:30 a.m. The meeting was attended by Commission members: Eunice Beatty, Mike Owens, Will Berkley, Frank Penn, Carolyn Plumlee and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Dave Jarman, Denice Bullock and Barbara Rackers, as well as Firefighter Allen Case, Division of Fire & Emergency Services and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

1. **DP 2012-46: SANTA BARBARA LAND COMPANY, LOTS 3 & 4 (KINEMETRIX)** (9/1/12)* - located at 708 & 724 Miles Point Way.
(Council District 12) **(Brashear Brooks)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
10. Correct floodplain setback (25').
11. Correct plan title.
12. Addition of graphic scale.
13. Revise boundaries of property to be solid lines.
14. Addition of record plat designation.
15. Addition of adjacent property information.
16. Dimension typical parking spaces, drive aisles and sidewalks.
17. Denote construction access location.
18. Complete building dimensions.
19. Complete tree preservation plan information per Article 26 of the Zoning Ordinance.
20. Show direction of street cross-section.
21. Delete notes #4 & #13.
22. Correct notes #8 & #9.
23. Denote tree preservation area adjacent to Wolf Run Creek.
24. Adjust line weights to improve plan legibility.
25. Addition of details required under Old Frankfort Pike Landscape Ordinance.
26. Discuss proposed access and truck loading locations.
27. Discuss fill proposed in floodplain and necessary permits.

* - Denotes date by which Commission must either approve or disapprove request.

Staff Presentation: Mr. Martin began the staff's presentation by explaining that this item is a continuation from the Planning Commission's July 12th meeting. He briefly oriented the Commission to the location of the subject property on Miles Point Way, off of Old Frankfort Pike near its intersection with New Circle Road. The petitioner proposes to construct a manufacturing facility of just over 24,000 square feet in size, and the associated off-street parking. Traffic circulation on the property is proposed to be for one-way movements only, with two access points.

Mr. Martin stated that this plan was continued from the Commission's July 12th meeting due to a conflict between the right-of-way and the requirements of the Landscape Ordinance for Old Frankfort Pike. The petitioner has since submitted a revised plan, a rendered copy of which Mr. Martin displayed on the overhead projector for the Commission. Mr. Martin noted that this revised plan does depict landscaping that will meet the spacing requirements of the Landscape Ordinance completely within their property, so no right-of-way encroachment permits would be necessary.

Mr. Martin spoke to the revised conditions for approval, which were previously distributed to the Commission members.

The Staff Recommends: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
- ~~10. Correct floodplain setback (25').~~
10. 11. Correct plan title.
- ~~12. Addition of graphic scale.~~
- ~~13. Revise boundaries of property to be solid lines.~~
- ~~14. Addition of record plat designation.~~
- ~~15. Addition of adjacent property information.~~
- ~~16. Dimension typical parking spaces, drive aisles and sidewalks.~~
- ~~17. Denote construction access location.~~
- ~~18. Complete building dimensions.~~
- ~~11. 19. Complete tree preservation plan information per Article 26 of the Zoning Ordinance.~~
- ~~20. Show direction of street cross-section.~~
- ~~12. 21. Delete Denote notes #4 & #13 as omitted.~~
- ~~22. Correct notes #8 & #9.~~
- ~~23. Denote tree preservation area adjacent to Wolfe Creek.~~
- ~~24. Adjust line weights to improve plan legibility.~~
11. 13. 25. ~~Addition of Compete details as required under Old Frankfort Pike Landscape Ordinance, or Denote the LFUCG Council's approval of an amendment to the Old Frankfort Pike Landscape Ordinance prior to certification.~~
12. Remove signs from plan face.

He said that the details of the Landscape Ordinance requirements need to be properly detailed on the plan; condition #11 would complete that requirement. The staff is also recommending, with condition #12, that signs be removed from the plan face. Mr. Martin explained that, if signs are included as part of a development plan, an amended plan would need to be filed in order to move signage from one location to another on the property. He said that the staff is recommending approval of this plan, subject to the 12 revised conditions.

Commission Questions: Mr. Owens asked if this plan was reviewed by the Technical Committee, since it might have been filed as a late plan. Mr. Martin answered that it was reviewed by the Technical Committee. Mr. Sallee noted that this was not filed as a late plan.

Mr. Penn asked if the petitioner had made progress with the problem areas of this plan, since the number of conditions had been reduced from 25 to 12. Mr. Martin answered that many of the "clean-up" conditions had been satisfied prior to the Commission's July 12th meeting. The primary issue at that time was the conflict with the Old Frankfort Pike Landscape Ordinance. Mr. Penn asked if there is still developable land in the area controlled by this development plan. Mr. Martin replied that there is still land there that could be developed.

Petitioner Representation: Mark Abbott, Brashear Brooks, stated that the petitioner intends to comply with all of the recommended conditions, and appreciates the Commission's consideration of this plan.

Commission Comment: Ms. Roche-Phillips said that she appreciates that the petitioner used the two weeks following the July 12th meeting to bring this plan more into compliance.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve DP 2012-46, subject to the 12 conditions as listed in the revised staff recommendation.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, July 5, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. ANDERSON CAMPUS RENTAL PROPERTIES, LLC; ROBERT C. HODGES AND ANTHONY McINTIRE ZONING MAP AMENDMENT & P.B. DEVEREUX SUBDIVISION (LYNN GROVE ADDITION) ZONING DEVELOPMENT PLAN

- a. MAR 2012-9: ANDERSON CAMPUS RENTAL PROPERTIES, LLC; ROBERT C. HODGES AND ANTHONY McINTIRE (7/26/12)* - petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone, for 1.009 net (1.458 gross) acres, for property located at 99 – 119 Burley Avenue.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Medium Density Residential (MD) future land use for five parcels (105-119 Burley Avenue) and Greenspace/Open Space future land use for three parcels (99-103 Burley Avenue) of the subject property. The applicant proposes redeveloping a portion of the property with townhouses and retaining five of the existing single family structures. The applicant proposes a total of 14 dwelling units and associated off-street parking, for a residential density of 13.88 dwelling units per net acre (9.6 units per gross acre).

The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

The Staff Recommends: **Postponement**, for the following reason:

1. The current request does not meet the recommendations of the 2007 Comprehensive Plan for Greenspace/Open Space (GS) (buffering of the railroad), or the Medium Density Residential (MD) land use recommendations. The applicant believes that the proposed townhouse area for nine new units (exclusive of the five single family homes that are to remain) may meet the density recommendation; however, the staff cannot analyze this claim without further information from the applicant.
- b. ZDP 2012-31: P.B. DEVEREUX SUBDIVISION (LYNN GROVE ADDITION) (7/26/12)* - located at 99-119 Burley Avenue. **(Barrett Partners)**

The Subdivision Committee Recommended: **Postponement**. There were concerns with proposed lotting and compliance with open space requirements of the Zoning Ordinance.

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Should this plan be approved, the following conditions should be considered:

1. Provided the Urban County Council rezones the property R-1T; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote reciprocal parking and access for all buildings.
8. Denote sidewalk widths.
9. Denote number of bedrooms proposed per unit.
10. Complete topographic information on entire plan.
11. Discuss use of triangular remnant in R-1D zone.
12. Discuss need for sidewalk along Burley Avenue.
13. Discuss compliance with Article 8-10(o)(3) of the Zoning Ordinance.
14. Discuss lack of parking at 119 Burley Avenue.
15. Discuss plan status.

Zoning Presentation: Ms. Wade presented the staff report on this zone change, noting that the petitioners are requesting rezoning from the R-1D zone to the R-1T zone. She explained that the subject property is comprised of nine parcels, from 99 Burley Avenue through 119 Burley Avenue, including the entire face of one block. Burley Avenue is a local street that intersects South Broadway to the northwest of the subject property, and terminates adjacent to the Norfolk-Southern Railroad track at the rear of the subdivision. With regard to the zoning in the immediate vicinity, Ms. Wade said that the subject property is surrounded on the north, west, and south sides by R-1D zoning; the area to the east across the railroad tracks is zoned R-2. All of the uses in the surrounding area are residential. Ms. Wade stated that the parcels comprising the subject property are nearly one acre total in size. Some of those parcels are whole properties, but the rear portions of 101 and 103 Burley Avenue are not included in this request.

Ms. Wade said that the petitioners are proposing to redevelop some of the nine parcels, adding some new town-house units and retaining some existing single-family structures. She displayed an aerial photograph of the subject property, noting the surrounding single-family residences; the Kentucky Utilities substation located across Burley Avenue from the subject property; the railroad; and the University of Kentucky properties in the Press Avenue area. Ms. Wade also displayed several ground-level photographs, noting: 1) the locations of the five existing single-family residences that are proposed to be retained; 2) the four parcels at either end of the subject property, most of which are vacant, and the buildings proposed for demolition on the remaining parcels. Ms. Wade stated that the petitioners are proposing a total of 14 dwelling units on the subject property, with 42 associated off-street parking spaces along the rear of the property. She displayed several more photographs of the property, including views of: 1) the vacant portion of the property near the railroad tracks, which previously had three residential structures on it; 2) two single-family residences near the railroad tracks; 3) three newer single-family residences, which are proposed to remain; and 4) the intersection of Prospect and Burley Avenues.

Ms. Wade stated that the staff had distributed an exhibit package to the Commission members that included excerpts from the South Broadway Corridor Plan, the detailed recommendations that went along with it, and the associated land use map. Referring to a 2010 aerial photograph of the subject property, she noted the locations of the structures that had been demolished, and which ones have since been replaced. She explained that the Burley Avenue area was studied as part of the South Broadway Corridor Plan, and several specific recommendations of that Plan refer to the area, including: Recommendation 13, which speaks to providing dense landscaping, open space, or berming along the railroad track as a buffer to help mitigate the noise, vibration, dust, and odors associated with the train traffic. That portion of the South Broadway Corridor Plan also states that the area along the railroad track has been further impacted by stormwater problems, which were complicated by karst topography. Recommendation 14 also refers to this portion of the South Broadway Corridor, suggesting that properties along Burley Avenue and other streets in the area should be developed as medium-density residential, due to the structural condition of some of the existing buildings. Recommendation 35 suggests addressing the stormwater management issue in the low-lying areas of the rear portions of 101 and 103 Burley Avenue, which are not included in this rezoning request. Ms. Wade referred to the land use map that was included in the South Broadway Corridor Plan, noting that it recommends Medium Density Residential land use for most of the neighborhood, as well as a dense buffer along the railroad tracks.

Ms. Wade stated that the 1996 Comprehensive Plan adopted the South Broadway Corridor Plan in its entirety, including the land use recommendations, and those recommendations have carried forward to the 2007 Comprehensive Plan. Six of the nine parcels, which are located closer to Prospect Avenue, are recommended for Medium Density Residential use; the three larger parcels, located near the railroad, are recommended for Greenspace/Open Space land use. The staff's assessment of the 2007 Comprehensive Plan's recommended open space is that it was intended to implement the buffer as originally recommended by the South Broadway Corridor Plan. Ms. Wade said that the proposed 14 dwelling units on the subject property would result in a residential density of 13.88 dwelling units per net acre. The Comprehensive Plan's recommendation for Medium Density Residential use is 0–10 dwelling

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units per acre, so the petitioners' proposal is approximately four dwelling units above the recommended number. Replacing the existing single family residences with open space, as the Plan suggests, is not feasible unless the government is willing to purchase the properties. Given the current budgetary constraints, the staff believes that would be unlikely. Ms. Wade said that, in their original justification, the petitioners indicated that they could meet the density recommendation set forth by the Comprehensive Plan; however, they later determined that that would not be possible given the size of the subject property and the number of units proposed. The staff had previously concluded that it was appropriate and reasonable to conclude that Medium Density Residential use would be appropriate for all nine parcels included in the subject property. However, that would permit only 10 dwelling units on the subject property, not the 14 units proposed by the petitioners. In addition, the staff believes that providing more open space to act as a buffer on the three lots nearest the railroad tracks would be appropriate.

Ms. Wade stated that, based on the previously submitted plan for the proposed development, the staff had three major concerns: firstly, that the requested density was still above the recommendation of the Comprehensive Plan; second, that the petitioners had given no indication that they were willing to provide open space or buffering along the railroad tracks; and thirdly, that there were still concerns about how the remaining portions of 101 and 103 Burley Avenue would be used, since the tracts would become split-zoned. Ms. Wade reported that the petitioners had submitted a revised justification, copies of which were distributed to the Commission. In that justification, they asserted that the proposal is close, although slightly over, the density recommended by the Comprehensive Plan. They also contend that there are developments in the general vicinity of the subject property that are higher density than the proposed development.

Ms. Wade said that the staff does not believe that the comparisons offered in the justification are pertinent in this case, as the projects they used for comparison are not similarly situated. For example, one of the properties mentioned along Burley Avenue, which the Planning Commission considered for redevelopment earlier in 2012, was already zoned R-4 to permit a higher-density development. The petitioners also refer to an apartment complex, developed in the last decade, that is recommended for high density residential use by the Comprehensive Plan. The petitioner is contending that the existing R-1D zoning is inappropriate at this location, and the proposed R-1T zoning is appropriate, because it will serve as a transition between high density and single-family residential uses. The staff does not agree with that assertion, however, because the subject property is still surrounded by single-family zoning and uses. The petitioners also state, in their revised justification, that they are meeting several of the Goals and Objectives which were recently adopted by the Urban County Council for the 2012 Comprehensive Plan. They claim that the proposed development will fulfill Infill and Redevelopment goals, reduce pressure on the Urban Service Area boundary, use adequate essential facilities in an efficient way, and encourage a range of housing opportunities.

Ms. Wade stated that the staff does not agree that the subject property would function as a transition area, as the petitioners contend, since it is surrounded by single-family residences and zoning. The staff believes that, since the petitioners own parcels adjacent to the subject property, that they could meet the density recommended by the Comprehensive Plan by including the rear portions of 101 and 103 Burley Avenue that they excluded from this request. The staff also does not believe that there has been an unanticipated change of a physical, social, or economic nature in this area since the 2007 Comprehensive Plan. Ms. Wade said that, for these reasons, the staff is not able to support this rezoning request as proposed. She noted that, while the staff respects the petitioners' attempt to maximize density on their property, they would note that higher density is not appropriate at every location. The staff is recommending disapproval, for the following reasons:

1. The requested Townhouse Residential (R-1T) zone is not in agreement with the recommendations of the 2007 Comprehensive Plan for Greenspace/Open Space (GS) (buffering of the railroad), or the Medium Density Residential (MD) land use recommendations. The petitioners' proposed mixture of nine townhouses and five single family residences, representing a residential density of 13.88 dwelling units per acre, exceeds the density range of 0–10 dwelling units per net acre recommended by the Plan.
2. The existing Single Family Residential (R-1D) zone remains appropriate and the proposed R-1T zone is not appropriate for this location for the following reasons:
 - a. The subject property would remain surrounded by R-1D zoning and single family residences.
 - b. The established neighborhood is primarily comprised of small, detached single family residences, and the proposed townhouses would be inter-mixed with five single family residences which are to remain on site.
3. There has been no significant unanticipated change of a physical, social or economic nature since the Comprehensive Plan was adopted in 2007 which would warrant the increased density now requested.

Ms. Wade noted that the Zoning Committee recommended postponement of this request at their meeting in June, and they have not made any other recommendation since that time.

Commission Questions: Ms. Blanton asked if any changes had been made to this request since the Zoning Committee first reviewed it. Ms. Wade answered that the petitioners had submitted a revised justification, and shifted some buildings a few feet from the railroad.

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Ms. Roche-Phillips asked how big the two flag-shaped lots, which were not included in this request, are. Ms. Wade responded that, if those properties were included, the total size of the subject property would increase from 1.009 acres to 1.385 acres in size. Those two lots would equal approximately 1/3 an acre.

Ms. Plumlee asked if parking for the five existing structures is provided on the street. Ms. Wade answered that some of those vehicles currently park on the street; the "twin" structures have paved parking in the rear of the property. Ms. Plumlee asked how large the buffer area for the railroad should be. Ms. Wade responded that the staff did not suggest a specific width, but that they would be comfortable with a 15' buffer planted with trees, shrubs, or some other materials to help mitigate the noise and dust from the railroad track.

Ms. Mundy asked if the staff was recommending a 15' buffer only along the railroad track. Ms. Wade answered affirmatively. She noted that, should the petitioners choose to include the two parcels adjacent to the rear of the property, there is an existing low-lying area that could be identified as a detention area. Ms. Mundy asked who would be responsible for the maintenance of that detention area. Ms. Wade deferred the question to Mr. Martin's presentation on the development plan.

Ms. Roche-Phillips asked, with regard to the aerial photograph that depicts the nearby Newtown Crossing development, if a 15' buffer was provided along the railroad track at that location. Ms. Wade responded that she was unsure, but that the petitioners might be able to provide more information since they own that property as well.

Petitioner Comments: Dennis Anderson, petitioner, answered that the University Village development depicted in that photograph, which he also owns, has a 5' buffer area with a fence and plantings.

Development Plan Presentation: Mr. Martin presented the corollary combined preliminary development plan and preliminary subdivision plan, briefly orienting the Commission to the location of the subject property. The petitioners are proposing to retain the existing newer structures in the middle of the subject property, and construct new townhouses near the end of Burley Avenue and at the corner nearest to South Broadway. Mr. Martin explained that they are now proposing to install some buffering along the railroad tracks on this revised plan. Access is proposed to the property from Burley and Prospect Avenues, with a one-way circulation pattern through the development. This revised plan includes 14 dwelling units, 30' in height, with four bedrooms in each unit, for a total of 56 bedrooms. The petitioners are also proposing 42 parking spaces.

Mr. Martin stated that the Subdivision Committee originally recommended postponement of this plan, due primarily to concerns about the open space requirements of the R-1T zone. The petitioner submitted an exhibit that demonstrates that the proposed development can meet the requirement for private open space on each lot. Therefore, the staff has prepared the following revised recommendation, copies of which were distributed to the Commission members:

The Staff Recommends: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-1T; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. ~~Denote reciprocal parking and access for all buildings~~ Provide lotting and site statistics as required for a preliminary subdivision plan.
8. ~~Denote sidewalk widths.~~
9. ~~Denote number of bedrooms proposed per unit.~~
10. ~~Complete topographic information on entire plan.~~
8. ~~11. Discuss Denote vehicular use screening adjacent to of triangular remnant in R-1D zone.~~
12. ~~Discuss need for sidewalk along Burley Avenue.~~
13. ~~Discuss compliance with Article 8 10(e)(3) of the Zoning Ordinance.~~
14. ~~Discuss lack of parking at 119 Burley Avenue.~~
15. ~~Discuss plan status.~~

Mr. Martin stated that the first six conditions are typical sign-offs. He explained that condition #7 refers to the original filing of this item as just a preliminary development plan. The staff recommended that the petitioners make it a preliminary subdivision plan as well, which would require some adjustments in the usual site statistics. Mr. Martin said that the staff reviews each zoning development plan as if the proposed zoning was in place, which can result in differing staff recommendations between the map amendment request and the corollary plan. The staff is now recommending approval of this zoning development plan, and would note that, following the discussion at the Subdivision Committee meeting, the petitioners have added sidewalks along the frontage of the subject property.

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Commission Question: Ms. Roche-Phillips stated that the existing older structures on the subject property seemed to have larger setbacks than the newer structures, and asked if the R-1T zone has lesser setback requirements. Mr. Martin answered in the affirmative. Ms. Roche-Phillips asked if the existing zoning requires 20' setbacks, with which Mr. Martin agreed.

Staff Comments: Mr. Martin explained that the petitioners are proposing to consolidate two lots adjacent to the detention area. He said, with regard to Ms. Mundy's earlier question, that a private property owner would normally be required to maintain the detention area, but the LFUCG will often assume those responsibilities in residential areas. However, townhouse residential developments are often considered as commercial properties with regard to storm-water control.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that he was representing two development groups, both of which were operating in the same area, who came together to create a better development plan for the subject property than either group could have done alone. The two groups wanted to work together in order to ensure that the development is architecturally similar, and to benefit the community.

With regard to the staff's concerns about the density proposed for the subject property, Mr. Murphy said that, although the density is a bit higher than the Comprehensive Plan recommends for the subject property, the petitioners believe it would be appropriate at this location. He added that the Comprehensive Plan's definition of medium density includes townhouses and attached homes.

Mr. Murphy displayed the following photographs of the subject property and surrounding area: 1) view of the large Kentucky Utilities substation located directly across from the property, which is 25' tall; 2) thick vegetation near the railroad track, which is approximately 6' above street level; 3) a view from the subject property to the railroad tracks, noting the thick vegetation that makes it difficult to see the tracks; 4) the existing house on 119 Burley Avenue, the owner of which has agreed to sell her home to the petitioner when she decides to move; 5) a house on Prospect Avenue which is vacant, not up to code, and has boarded-up windows; and 6) the University Village development, which is owned by one of the petitioners and located ½ block behind the subject property. He said that some area residents have thanked the petitioner for purchasing vacant homes in the area, removing squatters, and helping to clean up the neighborhood. He added that all of that particular petitioner's developments have on-site managers who are familiar with the activities on the properties and work to ensure they are well-maintained.

Mr. Murphy said that no mention was made of student housing needs when the South Broadway Corridor Plan was drafted in 1990. That Plan mentioned that most of the housing stock in the Burley Avenue area was in poor condition and should be either renovated or replaced. In the 22 years since the adoption of that Plan, portions of the area have been redeveloped for use as student housing, and many students have moved into the neighborhood. Referring to the exhibit packet he had previously distributed to the Commission members, Mr. Murphy stated that, within the 400' notification area for this rezoning request, just over 18% of the properties are owner-occupied; over 70% of the properties are occupied by renters. The other 10% of the property in the area is owned by Kentucky Utilities and the University of Kentucky. As the University has expanded its operations in recent years, including the very large project at the Medical Center, a great deal of student housing in the area has been lost, "pushing" the students toward housing further away from the campus. The subject property and surrounding area are an ideal location for student housing, since they are within easy walking distance of campus, unlike the developments along Red Mile Road, which require a bus ride.

Mr. Murphy said that, at the Subdivision Committee meeting three weeks ago, there was some discussion about how students residing on the subject property would get to campus. He explained that most of the students in the area cut through the adjacent University Village development to Virginia Avenue, which then provides easy access to the center of UK's campus. There are fence openings at the end of American and Camden Avenues which connect to the streets off of Waller Avenue, which are also used by students. Some concerns were raised at that meeting about students crossing the railroad tracks to get to campus; Mr. Murphy pointed out that the 6' grade change and heavy vegetation along the rail line near the subject property would probably be sufficient to discourage pedestrians from crossing at that location. The petitioner has begun discussions with the University about the possibility of constructing another pedestrian overpass over the railroad tracks, but those talks are still in very early stages.

Mr. Murphy said, referring to his exhibit packet, that it contained copies of both the original and current plats for the subject property and surrounding neighborhood. The original plat for the property was recorded in 1923, with all of the lots on the northern side of Burley Avenue being 25' wide and 125' deep. The resulting density for Burley Avenue was 14 units per acre. Mr. Murphy noted that the 13.88 units now proposed is less than what was originally intended for the property. The townhouse development on the former Kingdom Hall property, which was approved earlier in 2012 by the Planning Commission, has a density of 16.99 units per acre. The Board of Adjustment granted a variance for that development to move the setback lines forward, which allowed a greater amount of buildable area on that lot. The LFUCG was involved in that process as well, agreeing to relocate a neighborhood park across the street in order to accommodate the proposed development. Given the similarity between that project and this proposal, the

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petitioner believes that the proposed development will be appropriate and in keeping with the character of the neighborhood. Mr. Murphy added that, 11 years ago, the petitioners developed the adjacent University Village complex at 42.5 units per acre, which they contend reinforces their assertion that the proposed development will fit in with the historical character of the neighborhood. The petitioners also contend that, by constructing the parking area to the rear of the proposed townhouses and moving the structures toward the street, the appearance of the neighborhood will actually be improved.

Mr. Murphy stated that some questions had previously been raised as to why the petitioners included the existing single-family detached residences that are proposed to remain on the property as part of this rezoning request. He explained that, by including those structures in this request, they can be maintained on one development plan, with a joint parking area in the rear and a good driveway circulation plan. That proposal would eliminate the creation of several individual driveways to Burley Avenue, and provide a more urban design for the neighborhood.

Mr. Murphy stated that, although the staff does not agree, the petitioners believe that the proposed zone change is in agreement with the recommendations of the Comprehensive Plan. He said that the consensus among various planning organizations in Fayette County for the last 20 years has been that we should "build up, not out." One of the necessary means for achieving that goal is increasing density through redevelopment of existing areas with vacant lots. Mr. Murphy said that the 2012 Comprehensive Plan Goals & Objectives emphasize increasing density in the urban core, where essential services and infrastructure are already available, in order to relieve the pressure on the Urban Service Area Boundary. He read the following, from Goal E, Objective 1B: "Encourage compact, contiguous and/or mixed-use, sustainable development within the Urban Service Area, as guided by market demands to accommodate future growth needs." Mr. Murphy said that the petitioner believes that the proposed development would be the perfect project to fulfill that goal.

With regard to the staff's concerns about the vacant parcels at the rear of the subject property, which are not part of this request, Mr. Murphy said that the petitioners own all but one of the lots that have frontage on Prospect Avenue. Their plan is to purchase that one remaining property if the owner decides to sell, rezone it and all of the other vacant parcels to R-3, and develop that area as a transition from the high-density student apartment to the north, and the single-family uses in the Burley Avenue area.

Dennis Anderson, petitioner, stated that the residential structures in the Burley Avenue area were built in the 1920s and 1930s without the automobile in mind, so parking space is limited in this neighborhood. As a result, many of the existing residents park in their front yards. Mr. Anderson approached some of the other individuals who were building in the neighborhood in order to create cohesively developed blocks with one driveway access and parking in the rear. He displayed a photograph of an example of the type of housing proposed to be constructed on the subject property, noting that the new units would be attractive, safe, and energy efficient, unlike many of the existing homes in the area. Mr. Anderson said that he and the other petitioners believe that the proposed townhouses with parking in the rear would be the best solution for the redevelopment of the subject property, and he requested approval.

Commission Question: Mr. Penn asked if the five new single-family structures on the subject property are rented or owner-occupied. Mr. Murphy answered that those residences are currently rented to UK students. Mr. Penn asked why the petitioner decided to "switch" the type of development from single-family detached homes to townhouses in the middle of a block. Mr. Anderson answered that he had intended to have the residents of the new homes on Burley Avenue park in the lot he owns as part of the University Village development. Mr. Penn asked if Mr. Anderson had built the five single-family residences, to which Mr. Anderson responded that he had built three of them. Mr. Penn asked where the residents of those homes were expected to park. Mr. Anderson answered that it had been his intention for those residents to park in the University Village lot, down the street. Mr. Penn asked if Mr. Anderson had decided to seek a zone change for the subject property and switch to townhouse development because those units would be easier to rent than single-family homes. Mr. Anderson replied that, if adequate parking was available, single-family homes would be more desirable, and cheaper to build. He said that it would actually cost more to build three attached units with parking in the rear, although it would be a nicer place to live since parking would be easily accessible. Mr. Anderson added that the main reason for the change was that he believed that proposed townhouses development would be a better design for the property.

Mr. Murphy added that the petitioners nearly filed a zone change application for just the portion of the subject property owned by Mr. Anderson, when they realized that it might be preferable to work with the other developers in the area.

Mr. Wilson asked if the petitioners would be willing, since their proposed density is so close to the Comprehensive Plan recommendation, to negotiate that number down as suggested by the staff. Mr. Murphy answered that the property where the University Village development is now located was not recommended for residential use by the Comprehensive Plan when the property was rezoned in 2001. The petitioners believe that the provision of student housing within walking distance of the UK campus is important enough to allow the density on the property to go a few units above the Plan's recommendation. Mr. Anderson noted that one of the reasons for the specific density pro-

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posed is that it would allow them to maintain straight property lines, which could make it easier to develop the vacant parcels to the rear of the subject property in the future.

Citizen Support: Carol West, 1310 Southern Avenue, stated that she supports the proposed rezoning of the subject property, because she believes that the petitioner's previous redevelopment projects have improved the neighborhood. She said that the new homes are more attractive, and property values in the area are improving. In addition, neighborhood safety has improved due to more frequent patrols by bicycle and mounted police who monitor the activities at the nearby student apartment complexes.

Casey Collin, 1306 Southern Avenue, said that she believes that her neighborhood looks more attractive because of the petitioner's redevelopment efforts. She stated that, contrary to what some believe, the UK students who live nearby are excellent neighbors. She added that drug activities and crime in the neighborhood have decreased since many of the boarded-up homes have been removed, and she now feels safer in her home.

Citizen Opposition: Ginny Daley, 136 Burley Avenue, asked that the Planning Commission disapprove this request. She said that the Burley Avenue neighborhood is already fairly dense, with small lots and yards, and gravel driveways. The neighborhood does not have storm sewers, so the added stormwater runoff from the paving on the subject property could cause problems. The addition of new residents in the proposed development would add more vehicle traffic to the area, where the streets are narrow and there are no sidewalks to accommodate the regular pedestrian traffic. Ms. Daley noted that, since the subject property is situated at the rear of the neighborhood, the additional traffic will impact every resident, since students will have to travel through the neighborhood to reach any of the nearby collector streets.

Ms. Daley said that the Burley Avenue area is safer, but not because of the petitioner's redevelopment projects. She believes that adding a large number of student residents near the railroad tracks could actually result in increased crime in the neighborhood.

Ms. Daley stated that she does not agree with the petitioner's assertion that the proposed development is in agreement with the recommendations of the Comprehensive Plan. She said that the 2007 Comprehensive Plan emphasized the need for affordable workforce housing, but the proposed development will be targeted to UK students only. The rents in those types of student developments typically cost about four times as much as a single family would pay for a similar dwelling unit. In addition, redeveloping the subject properties will require the removal of existing affordable housing. Ms. Daley did not believe that the proposed development would be suitable for reuse by families or as elderly housing, since the units are constructed with four bedrooms and bathrooms, with small common-area kitchens and living rooms.

Ms. Daley said that the 2007 Comprehensive Plan also spoke to sustainability and reducing carbon footprints. She believes, however, that tear-downs and new construction add unnecessary waste to landfills, and removal of vegetation for parking lots can contribute to the urban heat island effect, which is contrary to reducing carbon footprints.

Ms. Daley stated that she does not believe that the proposed development is sympathetic with the existing neighborhood in terms of scale, density, or function. She believes that approving this proposed rezoning could set an unhealthy precedent for future development in the neighborhood.

With regard to Mr. Murphy's comments, Ms. Daley said that, when the South Broadway Corridor Plan was adopted 20 years ago, there was extensive blight in the neighborhood. She noted that now, however, she believes that the petitioner is one of the causes of blight in the area. The petitioner and other developers purchase run-down properties and either board up the structures, or remove them and allow the lots to become overgrown and unattractive.

With regard to the statistics Mr. Murphy provided about owner occupancy in the neighborhood, Ms. Daley said that her property, which she owns, was depicted as a rental on the graphic distributed by the petitioner. She stated that, although not all of the residents of the Burley Avenue area own their homes, many are long-term, contributing members of the neighborhood, and students are actually the transients in this area.

Ms. Daley stated that UK's 20-year plan does not include any proposal to construct student housing across the railroad tracks in the vicinity of Burley Avenue. She believes that the new UK student housing initiatives will actually alleviate the need for housing in the vicinity of the subject property, which will leave housing complexes that are unlikely to be reusable as housing for families.

Ms. Daley said, with regard to Mr. Murphy's comments about the recent apartment development on the Kingdom Hall property, that that parcel is much better situated for a student housing development. She noted that its location close to the South Broadway/Burley Avenue intersection would be more convenient for students, and they would not have to travel through the neighborhood to access a collector street. Ms. Daley believes that the developer of that project

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is giving back to the neighborhood by purchasing three houses and using that space to provide a park for the residents. She added that she does not believe that the petitioner has demonstrated that kind of generosity in their relationship with the Burley Avenue neighborhood residents.

Petitioner Rebuttal: Mr. Anderson stated, with regard to Ms. Daley's comments about his generosity, that the Town Branch Trail was made available through a \$1.7 million donation he made. He also gave the church located next to the trail half of the property for their new facility.

Mr. Murphy stated that, when property owners in the Burley Avenue neighborhood have been ready to sell their property, they typically contact one of the petitioners because that sale would eliminate the need for them to hire a realtor and pay many of the usual commissions involved in such a transaction. The petitioners are held to much higher standards with regard to code violations than are the property owners in many cases, so many of the existing structures in the neighborhood are in such poor condition that they are unable to be renovated.

Mr. Murphy said that the subject property will become student housing whether or not this request is approved, since students are actively seeking to live in the area due to its close proximity to the UK campus. He said that he sees no downside to allowing the proposed units to be attached, which will result in a well-designed development with parking in the rear. The petitioner will also construct sidewalks which can be used by all of the residents.

Staff Rebuttal: Ms. Wade stated, with regard to Mr. Murphy's comments about the original plat for the subject property, that the density depicted on the plat is not necessarily an accurate depiction of the neighborhood's historical development pattern. At the time of their sale, many lots were combined. She noted that the historical development in the neighborhood is medium density, or about $\frac{1}{2}$ to $\frac{2}{3}$ of the density "proposed" on the original plat. For example, the adjacent block was platted with 28 lots, but there are actually only 13 dwellings built on those lots.

Ms. Wade stated that the densities developed on the nearby locations are not comparable, since the subject property is located at the rear of the subdivision and generally recommended for Medium Density Residential use. The recently developed property that was mentioned earlier was zoned R-4, so the developer had an inherent right to build at a higher density. The other apartment building, which is also owned by the petitioner, was rezoned against the Comprehensive Plan recommendation and it is not consistent with this application.

Commission Questions: Mr. Wilson asked if the Burley Avenue area has a neighborhood association. Ms. Wade answered that the Burley Avenue neighborhood does not have a registered association. The staff sent one neighborhood association notice in conjunction with this rezoning request, to the North Elizabeth Street Neighborhood Association.

Ms. Blanton stated that she was concerned about drainage and storm and sanitary sewer issues in the vicinity of the subject property. She asked what impact the proposed development would have on the surrounding neighborhood, given the increased density, including more bathrooms and paved parking area. Mr. Newman answered that that type of information is typically addressed with the improvement plans for a new subdivision. He said that the petitioner is proposing to utilize low-impact development and Best Management Practices, which could include pervious pavement and underground or off-site detention. Ms. Blanton asked if those things would be required in order for the petitioner to redevelop the subject property. Mr. Newman answered that, if this rezoning request is approved, the petitioner will submit improvement plans, including a drainage report, as the next step in the process. He noted that the subject property naturally drains to the vacant parcel at the rear.

Ms. Roche-Phillips stated that she would be willing to approve this request, and she believed that the proposed rezoning to R-1T is in agreement with the 2007 Comprehensive Plan as well as the Goals & Objectives of the 2012 Comp Plan. She said that the increase in density from 10 units to 14 units per acre is acceptable, particularly given the subject property's proximity to the railroad tracks and other student housing developments. Ms. Roche-Phillips explained that she believes that attached single-family housing is more sustainable and energy efficient than the existing detached residences, and has a lower carbon footprint. She was sympathetic with Ms. Daley's issues, and noted that she and other Planning Commission members have expressed concern in the past about the wholesale redevelopment of vacant lands for student housing, simply because the market exists for such development. Ms. Roche-Phillips said that in this instance, however, she believes, and other residents gave testimony that agrees, that the proposed development would be an improvement for the neighborhood in terms of safety. She added that Mr. Newman had addressed her previous concerns about the need for stormwater improvements on the development plan.

Mr. Penn stated that Mr. Anderson made some good points about locating the parking to the rear of the townhouse units in the proposed development, but he was still concerned about "turning over everything within walking distance of the University to student housing." He said that he is concerned about the success of converting the proposed development to single-family homes should it be no longer needed for student housing.

Mr. Penn noted that he owns property in the Burley Avenue area, and that, despite all of the recent redevelopment there, the railroad track is still a constant, and it affects stormwater drainage by holding and damming water. He added that the subject property might naturally drain to the vacant parcels to the rear; but, if those parcels are to be developed, eventually the issue will have to be properly addressed.

Mr. Cravens said that he would be willing to support this rezoning request, because townhouse units are the most compatible type of attached dwelling to construct in a single-family neighborhood. He added that cleaning up the streetscape by placing the parking area in the rear of the buildings and adding sidewalks would be an improvement to the area residents. Mr. Cravens noted that he is very familiar with the area, since his great-uncle built his first house on American Avenue in 1923.

Mr. Owens stated that he is not concerned about the density of the proposed development, since he believed that it will be an overall improvement for the neighborhood, but he agrees with Mr. Penn's concerns about stormwater drainage. He said that that issue must be addressed at the appropriate future plan stage.

Zoning Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 6-2 (Plumlee and Wilson opposed; Beatty, Berkley, and Brewer absent) to approve MAR 2012-9, for the following reasons:

1. The existing Single Family Residential (R-1D) zone is inappropriate and the proposed Townhouse Residential (R-1T) zone is appropriate, for the following reasons:
 - a. The proposed rezoning will allow this property to be developed at a density just under 14 units an acre, which is the density this neighborhood was designed for under the 1923 Plat of Lynn Grove Addition. All recent development in this area has been at a density equivalent to, or greater than the density proposed for this development. This development's proposed density is 13.88 units per net acre. A recent development in the 300 block of Burley Avenue is being constructed at a density of 16.9 units per acre. That development was approved this year by the Board of Adjustment and was facilitated by the closing of a public park so that attached townhouse units could be developed on that property.
 - b. Development of these properties as attached units, rather than detached, will allow a more urban form of development, which is appropriate for this area. The townhouse units will be placed closer to the street with the result that the residential units themselves, rather than automobiles, will be the visual focal point of the block. In addition, on-street and front yard parking has been an issue in this neighborhood. By attaching the units, this development will allow parking in the rear in a joint parking area. Thus, on-street and front yard parking problems will be relieved.
 - c. R-1T zoning will serve as an appropriate transition between residential uses and the large Kentucky Utilities substation located directly across the property on the south side of Burley Avenue.
 - d. This proposed development will allow student residents to walk or bicycle to campus, reducing the use of motorized transportation in the community.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Roche-Phillips, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve ZDP 2012-31, with the eight conditions as included in the revised staff recommendation.

2. MONTESSORI HIGH SCHOOL OF KENTUCKY ZONING MAP AMENDMENT & BURLEY TOBACCO GROWERS (MONTESSORI HIGH SCHOOL OF KENTUCKY) ZONING DEVELOPMENT PLAN

- a. MARV 2012-10: MONTESSORI HIGH SCHOOL OF KENTUCKY (9/1/12)* – petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Professional Office (P-1) zone, for 0.6478 net (0.7185 gross) acre, for property located at 620 South Broadway.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Professional Services (PS) for the subject property, which is within the boundaries of the Newtown Pike Extension Corridor Plan, adopted as an element of the Comprehensive Plan. The petitioner proposes P-1 zoning in order to use the existing structure for offices and a school for academic instruction. The Montessori High School of Kentucky plans to have 25 students in attendance at this location. Dimensional variances are also being requested with this zone change application.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Professional Office (P-1) zone is in agreement with the 2007 Comprehensive Plan and its recommendation for a Professional Services (PS) land use for the subject property.
2. The proposed mixture of uses for this portion of the South Broadway corridor, adjoining a portion of the Oliver Lewis Way corridor, is supportive of the vision statement from the Newtown Pike Extension Corridor Small Area Plan as adopted by the Planning Commission in 2003, and wholly incorporated into the 2007 Comprehensive Plan.

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3. This recommendation is made subject to approval and certification of ZDP 2012-52: Burley Tobacco Growers (Montessori High School of KY), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES

1. Reduce the minimum off-street parking requirements by 50%, from 62 spaces to 31 spaces.
2. Reduce the required vehicular use area screening from 5 feet to 0 feet.

The Zoning Committee Recommended: **Approval of both requested variances.**

The Staff Recommends: **Postponement of the requested landscaping variance,** for the following reasons:

- a. The Landscape Review Committee is scheduled to meet on July 10, 2012, and may choose to make a substantive recommendation on the requested landscaping variances at that meeting.
- b. It appears that all of the otherwise required landscaping is not necessary for this proposed change of use, but there is some existing area on the subject property that could be made available for trees or shrubs.

The Staff Recommends: **Approval of the requested parking variance,** for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity as the existing structure was originally built about 90 years ago, in an age of street cars and public transportation - long before off-street parking issues became prevalent, locally. The office and school uses of the subject property will still be supported by ample off-street parking for their visitors and daily occupants, without adversely impacting their neighbors or the neighborhood.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The new high school use would result in a reduced off-street parking requirement compared with the parking necessary to support 2,000 square feet of office use. Since no physical expansion of the building on the subject property is requested, there would be no circumvention of the existing Ordinance.
- c. There are special circumstances that apply uniquely to the subject property. Some 38 spaces immediately adjacent to the subject property are controlled by the appellant, half of which are available for use by the school and office on the subject property, in addition to those on site.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely prohibit the location of the proposed high school at this location, which will be partnering with the nearby University of Kentucky College of Education.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance in 1969. The subject property has not physically changed much since that time, or since its original development in the 1920s. However, our Zoning Ordinance has undergone numerous changes in the past 90 years, including those to the provisions for parking and landscaping.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a Zoning Compliance Permit, a building permit and all applicable Federal, State, and Local approvals.

- c. ZDP 2012-52: BURLEY TOBACCO GROWERS (MONTESSORI HIGH SCHOOL OF KY) (9/1/12)* - located at 620 South Broadway.
(Carman and Associates)

The Subdivision Committee Recommended: **Postponement.** There were questions about access and the variances requested.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Provided the Planning Commission grants the requested variances and waivers.

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9. Delete duplicate note #7.
10. Denote contact information for developer.
11. Clarify floor area devoted to high school use.
12. Discuss need for access improvements and controls.
13. Discuss variances and the need for some interior landscaping and/or tree canopy.
14. Discuss possible turn lane improvements.

Zoning Presentation: Ms. Wade presented the staff report on the zone change, stating that the petitioner is proposing to rezone the subject property from B-4 to P-1. The property is located on the southeast side of South Broadway, approximately 250' from that roadway's intersection with Bolivar Street. There are other properties in the vicinity with the B-4 zoning designation, including parts of the University of Kentucky property; some parcels on the opposite side of South Broadway; and the adjacent parcel that is being used for parking for the subject property. Other zoning categories in the vicinity include two parcels to the southwest, which are zoned P-1; the Tolly-Ho restaurant building to the north, which is zoned B-1; and some residential zoning to the rear of the property, across the area that used to be part of the railroad, which is currently used for the UK art department. The South Broadway corridor has a mixture of commercial uses in this vicinity, which is included in the area of the Newtown Pike Extension Corridor Plan. That Small Area Plan was adopted by the Planning Commission in 2003, and it became an adopted element of the 2007 Comprehensive Plan.

Ms. Wade stated that the petitioner is proposing to rezone the subject property in order to utilize approximately 2,000 square feet of the existing building for a school for academic instruction. The owner and current user of the building is the Burley Tobacco Growers Cooperative Association, which has been in existence at this location since approximately 1920. The building is two stories in height and includes a basement. That portion of the building that is not proposed to be used for the Montessori school will continue to be occupied by the Co-op Association.

Ms. Wade said that the Newtown Pike Extension Corridor Plan recommends Professional Services use for the subject property, as well as the two parcels to the southwest that are already zoned P-1. That Plan creates a vision for the area surrounding the property to become part of the vital core of the city; to exhibit a mixture of uses; and to create a place where residents can live, work, and play in a network of neighborhoods. Ms. Wade stated that, since the petitioner is requesting P-1 zoning and the Comprehensive Plan recommends a Professional Services use, the staff finds that this request is in agreement with the Plan's recommendation. In addition, the staff believes that the proposed rezoning supports the vision of the NPE Corridor Plan by adding a school to the existing mixture of uses in the vicinity. Ms. Wade noted that the petitioner's justification emphasizes the need for the Montessori High School to be located near the UK Department of Education, with which they have a partnership. The school is currently located on Rose Street, but they are experiencing parking and instructional space limitations, which precipitated this rezoning request. Ms. Wade concluded by noting that the Zoning Committee and the staff are recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting that the Commission members had received copies of the revised recommendation for this plan. He stated that the existing structure on the subject property has a footprint of approximately 23,000 square feet; the petitioner is proposing to utilize approximately 2,000 square feet of that area. There are three existing accesses to the subject property and its associated parking, all of which the petitioner is proposing to use for the school, as well as an access through the Tolly-Ho property to Bolivar Street, in order to provide the opportunity for drivers to make left-hand turns onto South Broadway from Bolivar Street.

Mr. Taylor stated that, since the Subdivision Committee meeting, the staff has had further discussions with the Division of Traffic Engineering about condition #12, which refers to the need for access improvements and controls. The petitioner supplied a copy of their circulation plan to the Division of Traffic Engineering. Mr. Taylor displayed the circulation plan on the overhead projector, noting that the preferable access point for the petitioner's primary entrance would be the second access point to South Broadway, the middle access point of the three depicted on the plan. Drivers could then proceed to the drop-off area located near the building, and choose to exit via a right-hand turn onto South Broadway, or access Bolivar Street behind Tolly-Ho. The petitioner's other access option would have drivers use the first access to the property, and drop off students at the rear of the building. Mr. Taylor stated that the petitioner's proposed circulation plan was accepted by the Division of Traffic Engineering, who was comfortable with the circulation pattern, given the limited scope of the proposed school. They did request, however, that a condition be added to the development plan to set a maximum number of 40 students allowed for the school. The petitioner is currently proposing to allow 25 students. Displaying an aerial photograph of the property on the overhead, Mr. Taylor said, with regard to condition #14, that the Newtown Pike Extension Corridor Plan includes proposed turn lanes and other improvements on the opposite side of South Broadway from the subject property. The staff believes it would be acceptable, therefore, for the Commission to delete that condition.

Commission Question: Mr. Penn asked if the Bolivar Street access to the subject property, which is located behind the Tolly-Ho restaurant, is provided via an access easement or an agreement with the owner of that parcel. Mr. Tay-

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Mr. Penn asked if that letter provides access only to the petitioner, or to the Burley Tobacco Co-op as well. Mr. Taylor responded that that agreement is between the Montessori School and the owner of the Tolly-Ho property at this time. Mr. Penn asked if it is appropriate to grant access to a tenant on the subject property, and not to the property owner. Mr. Taylor answered that the school's proposed primary access would be to South Broadway. They were attempting to secure permission to use the Bolivar Street access in order to provide a safer option for drivers who need to make a left-hand turn onto South Broadway, but no access easement was granted. Mr. Penn asked if it would be a safer alternative for that agreement to be made between the owners of the subject property and the Tolly-Ho property. Mr. Taylor answered that the Bolivar Street access might be a safer alternative for any users of the building. Mr. Penn said that he does not believe it makes sense to grant an access easement solely for the use of a tenant who only occupies a small portion of the building on the subject property. Mr. Sallee responded that the access proposed is via a private agreement, not an easement. Mr. Taylor said that, if the development plan included the use of the entire building on the subject property, the conversation about granting access to Bolivar Street would be much the same. Mr. Penn said that, if the Commission is going to grant a zone change for the entire subject property, not just for an area to be used by the proposed school, then the access agreement should be made with the owner of the property, not the tenant.

Ms. Plumlee asked if left turns are currently permitted onto South Broadway. Mr. Taylor answered that left-hand turns are permitted on that roadway.

Mr. Owens asked for clarification of Mr. Taylor's answer to the previous question, noting that he has received a copy of a statement from Mr. Neal requiring that all traffic accessing the Montessori School should be right-in/right-out only from South Broadway. Mr. Taylor responded that there is no signage proposed on the development plan to restrict traffic in that manner. He said that that should be considered as more of an on-site management agreement rather than something denoted on the development plan. Mr. Taylor added that that issue should be part of the Division of Traffic Engineering's sign-off on the plan, so the staff would know that it needs to be included.

Ms. Blanton stated that the petitioner had noted in the Zoning Committee meeting that such signage would be provided.

Variance Presentation: Mr. Sallee presented the staff's report on the requested variances, noting that the staff had distributed a handout that lists findings for all of the requested variances. In addition, the staff prepared a supplemental staff report on the requested landscape variance, which had been placed in the Commission's notebooks. Mr. Sallee stated that, at the Zoning Committee meeting three weeks ago, the staff recommended approval of the requested parking variances, and postponement of the landscaping variance. Since that time, the Landscape Review Committee has met, and the staff's supplemental report reflects the discussion at that meeting.

Mr. Sallee stated that the petitioner is proposing two variances as part of this rezoning request: first, a parking variance seeking to reduce the required off-street parking from 62 spaces to 31; second, to reduce the required vehicular use area screening from 5' to 0'. Article 18 requires that, when a change of use is proposed for a property, a landscape buffer be provided along the perimeter of the property adjacent to the paving of 5' in width. In that buffer, a tree is required every 40 feet, as well as a continuous hedge, planting wall, or earth mound. Mr. Sallee noted that, if that requirement were fully implemented, according to the area of the subject property, the staff estimates that there would be approximately a 25% tree canopy provided on the site. He said, with regard to the requested parking variance, that the proposed use of the subject property as a school would result in a parking requirement that is approximately four spaces less than the current use, because the parking generator for a school is not as high. The staff would also like to note that the parking immediately to the north east of the subject property, which is not part of the zone change, is available and controlled by the petitioner. They currently lease about half of those 38 spaces to the Tolly-Ho Restaurant, but they retain the use and ownership of the other 19 spaces. Mr. Sallee stated that the subject property is somewhat walkable, as there are existing sidewalks, although the nearby railroad underpass creates a challenge for pedestrians.

Mr. Sallee reported that, at the Zoning Committee meeting, the members requested information about public transportation availability for the subject property. Mr. Sallee displayed a rendered photograph on the overhead projector for the Commission, explaining that it depicts the locations of all existing LexTran bus stops in the area, including one stop near the corner of Bolivar Street and South Broadway, and another directly across the street from the subject property. He noted that the staff and the Zoning Committee recommended approval of the requested parking variances.

Mr. Sallee referred to the supplemental staff report with regard to the requested landscape variance. He said that, at the Landscape Review Committee meeting, the petitioner was very concerned about the timing of the landscaping requirements and the expense that might be involved. The staff believes that there would be some challenges in implementing the required perimeter landscaping buffers. Along one of the property lines, a tall building is located very near the boundary; it would be difficult to keep landscape materials alive under such environmental conditions. The green space along the rear of the property, which is a former railroad spur, is owned by the University of Kentucky

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and is proposed for future use as a greenway. Therefore, the provision of landscaping in that location is not of critical importance, in the staff's estimation. On the other side property line, any landscape installation would go through the center of the parking lot and would make it extremely difficult for vehicles to move in and out of the site safely, as well as compromise the ability of the landscape materials to survive. Mr. Sallee stated that the staff and the Landscape Review Committee agreed, however, they also were in agreement that the front of the property could be a potential area in which to provide some landscaping. He displayed a photograph of that portion of the property, noting that hedges could be planted in the existing grass area, in addition to two trees in each of the existing islands in the parking area. The timing of the installation and size of the material was also discussed by the Landscape Review Committee, who agreed that it would be appropriate to allow smaller than usual plantings, in order to reduce costs for the petitioner. The Committee members also believed that installation and maintenance of the landscape material could be used as part of the school's curriculum as well. Mr. Sallee noted that, if trees smaller than the usually required caliper are to be planted, they might require more frequent limbing and pruning in order to maintain the required height for vehicle clearance.

Mr. Sallee stated that the staff is recommending approval of the requested landscape variance, for the following reasons:

The Staff Recommends: **Approval of the requested landscape variances**, for the following reasons:

- a. Granting the requested variance, conditioned upon the planting over time of at least some landscape material on the front of the subject property, will not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity since no physical expansion of the existing building or parking lot is requested.
- b. Approval of the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance, as some plantings would still be required in the front of the property, and the high school would use the care and maintenance of this new landscape material as a tool for teaching students about the care and maintenance needs for this plant material.
- c. The greenway owned by the University of Kentucky to the rear of this site, the tall building located on the southwestern property line, and the existing parking lot on the opposite site of the property are all special circumstances that contribute to the need for the requested landscape variances.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary and undue hardship to the applicant, and would likely result in landscape material that would not likely survive the lack of sunshine from adjacent buildings or the intrusion of vehicles in the parking lot on a daily basis. The installation of a fully-compliant perimeter landscape buffer would not permit a reasonable use of the subject property, as the main drive aisle in the existing parking lot would become bifurcated by the buffer, and would not permit vehicles to safely enter and exit the existing parking spaces.
- e. The fact that the school will locate in the building without any physical exterior changes to the property is indicative that this variance request is not the result of actions of the applicant since the Zoning Ordinance adoption in 1969.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a Zoning Compliance Permit, a building permit and all applicable Federal, State, and Local approvals.
5. Six trees shall be planted on the front ½ of the subject property, with no more than two in each existing landscape island or planting area. Trees may be from any list in the Planting Manual, if recommended for parking lot screening or interior landscaping areas. Trees shall be at least 1" caliper at the time of planting, but limbed to prevent damage to any vehicle under their branches. A minimum of two trees per year shall be planted on the subject property within 36 months of the approval of this zone change.
6. Hedges shall be planted in the existing grass area adjacent to the sidewalk on South Broadway. Hedge plantings may be from any list in the Planting Manual, if recommended for parking lot screening. Hedges shall be a minimum of 12" in height at time of planting, and their planting shall commence in the next 18 months, and be completed within 36 months of the approval of this zone change.
7. Planting and maintenance of these plantings are encouraged to become a part of the school's curriculum within the next three years.

Mr. Sallee stated that conditions 5 – 7 are a direct result of the Landscape Review Committee meeting, concerning the landscaping installations recommended on the front portion of the property.

Commission Questions: Ms. Blanton asked if the proposed hedges would be located directly adjacent to the sidewalk. Mr. Sallee answered that they would be. Ms. Blanton stated that she is concerned that hedges planted in that

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location might obstruct the view of a driver exiting the property. Mr. Sallee explained that a 12" hedge should not obstruct a driver's view, and he added that Article 18 requires that such plantings be of sufficient height to block vehicle headlights, but not grow tall enough to cause sight triangle issues.

Newtown Pike Ordinance Report: Mr. Emmons stated that the Newtown Pike Ordinance, which was passed by the Urban County Council in 2009, applies to certain properties that are located along the South Broadway and proposed Newtown Pike Extension corridors. There are 13 categories of guidelines in that Ordinance, which cover building exteriors, parking, site design, pedestrian accommodations, etc. Mr. Emmons said that, since the petitioner is proposing no physical changes to the subject property or the existing structure there, the staff reviewed each of the standard recommendations and determined that most of them are not applicable to this request. The petitioner is proposing to install the required bike racks for bicycle accommodations.

With regard to the landscaping requirements, Mr. Emmons noted that the landscaping recommended as part of the variance request for this property would meet the provisions of the Newtown Pike Corridor requirements. He said that the staff is recommending approval of the Newtown Pike Extension Ordinance requirements, with the noted provisions for any future amendments to the development plan.

The Staff Recommends Approval, for the following reasons:

1. The applicant has demonstrated significant compliance with the few applicable NPE Standards for this proposal.
2. The applicant has provided a reasonable justification with their request noting which design standards are not applicable because the applicant is not modifying the existing structure or lot.

This approval recommendation is subject to the following conditions:

- A. Should a revised development plan which would modify the existing structure or lot be submitted, a re-review of these NPE design standards and guidelines will be necessary.
- B. The following notes shall be added to the development plan:
 1. Any amended development plan will require a review of the NPE Design Standards & Guidelines.
 2. Site lighting shall comply with Article 28-6(g) of the Zoning Ordinance, which is the same as required in the Mixed Use zones.
 3. Any new signage installations shall comply with Article 17 of the Zoning Ordinance and the NPE Standards.
 4. Landscape materials installed on the front ½ of the property shall comply with the recommended variance conditions of approval, to ensure compliance with the NPE Standards.
 5. If the location of the dumpster is changed, or an additional dumpster is requested by the Division of Waste Management, then the dumpster(s) will be screened according to the "Dumpster Service Guide."
- C. The location of at least 6 bicycle parking spaces shall be noted near the entrance(s) to the building on the development plan.

Petitioner Presentation: Janet Shedd, an employee of the Montessori High School, stated that the petitioner will comply with all of the staff's recommendations. She requested approval of these requests.

Commission Questions: Mr. Penn asked if the petitioner sees this proposed location for the school as a temporary or long-term solution to their needs. Ms. Shedd answered that the petitioner intends to sign at least a three-year lease for the portion of the subject property to be used for the school. She explained that the subject property is particularly attractive to the school because of its location in close proximity to the UK Department of Education. Mr. Penn asked if the petitioner has discussed the proposed landscape requirements with the property owner. Ms. Shedd answered that the property owner is not currently aware of that requirement, but the school intends to inform them of it as soon as possible. She added that the school could possibly seek grants to assist with the cost of the landscaping, and that students will be caring for the plantings as part of the school's curriculum.

Ms. Blanton asked, with regard to her earlier question about possible right-turn only access to the property, if the petitioner is proposing to restrict turning movements. Ms. Shedd answered that she does not believe that the school has the authority to post signage to that effect, but they intend to inform parents via their handbook that only right-hand turns into and out of the property will be permitted.

Mr. Owens asked why the school needs to be located close to the University of Kentucky. Ms. Shedd responded that the Montessori High School operates under a working partnership with the College of Education. They use those facilities for Internet and library access, and the Dean of the College of Education serves on the school's Board of Directors. Mr. Owens asked if students will be traveling back and forth from the subject property to the UK campus. Ms. Shedd answered that students and teachers would be walking to the UK campus, and UK staff will be walking to the school facility. Mr. Owens asked how many people are employed by the Montessori High School. Ms. Shedd responded that there are currently 12 employees, but only three of them are full-time. Mr. Owens asked how many employees will be present during the school day. Ms. Shedd answered that approximately four or five employees would be on the campus during the instructional period.

Mr. Penn stated that he is very familiar with the Burley Tobacco Co-op, and asked why they are not involved with this request to rezone their property, and why the petitioner will be responsible for the landscaping, since they do not own the property. He said that the proposed zone change to P-1 would be to the Co-op's advantage, and he cannot understand why they are not more involved. Ms. Shedd answered that, during the rezoning process, the petitioner has worked exclusively with the Co-op's office manager, who recently resigned his position. She added that the president of the Co-op was required to sign the application for the rezoning, and that he supports this proposal. Mr. Penn said that he is concerned that the Planning Commission is being asked to rezone a property for a use that will only occupy 2,000 square feet of the building, when the property owner has not been involved in the process and is not aware of the recommended landscaping requirements.

Ms. Roche-Phillips stated, with regard to Mr. Penn's question, that she believes that the proposed P-1 zoning is more appropriate for the existing and proposed uses of the subject property, and that the property owner will benefit from the rezoning. Mr. Penn said that he believed that the property owner should install the landscaping.

Ms. Mundy stated that she agreed with Mr. Penn, and she was concerned about the possibility of granting a zone change for an entity that is not the property owner. Ms. Wade stated that the Kentucky Revised Statutes do not allow a tenant to rezone a property without the owner's permission. She noted that the petitioner in this case was required to have the owner's permission in order to file the request, and that the only way a rezoning can move forward without the owner's approval is if the Planning Commission or Urban County Council initiates the request. Ms. Wade emphasized that the Burley Tobacco Co-op is fully aware of this request, and knows that the petitioner is requesting the P-1 zone, which is in agreement with the Comprehensive Plan.

Director Comment: Mr. King stated that there are probably as many cases wherein the owner of the property is not the applicant, as there are cases where the owner is the applicant. He confirmed Ms. Wade's assertion that the petitioner in this case had to have the written permission of the property owner in order to proceed with this request.

Discussion: Mr. Penn said that he does not believe it is appropriate to require a tenant to make an improvement to a property about which the owner has not been made aware. He said that he is concerned that the process got to this point without the owner's participation. Mr. King said that, in the end, the property owner will have to give approval for the installation of the required landscaping, or the petitioner will be forced to withdraw their plans for the property. He added that, at this point, the Planning Commission is charged with recommending what the plan should be when the time comes to install the plantings. Mr. Penn asked if the property owner will be required to sign off on the plan. Mr. King answered that the owner will be required to sign the development plan. Mr. Sallee added that the proposed landscaping conditions will also be required to be added to the development plan. In addition, the conditions for the landscaping have been structured such that it can be installed by either the property owner or the tenant.

Mr. Owens asked if it would be possible to include signage restricting turning movements into and out of the subject property to right-hand turns only. Ms. Roche-Phillips commented that the Zoning Committee encouraged the use of the Bolivar Street access point to discourage parents from attempting to make a left turn onto South Broadway. Mr. Neal answered that the Division of Traffic Engineering staff did not believe it would be appropriate to restrict all drivers entering and exiting the subject property to right turns only, given that the petitioner's use will comprise only a small portion of the property. He added that he supports the petitioner's suggestion to add that restriction to their handbook, but he would prefer not to use official signage at this point. Mr. Owens said that if a turn lane for the Newtown Pike Extension is going to be constructed in front of the subject property at some point, it might be appropriate to make improvements to the traffic situation with this development plan. Mr. Neal responded that the school's proposal to restrict traffic to the property via their handbook is similar to the situation in place at many of the local public schools, and should be acceptable as long as they adhere to the submitted circulation plan.

Zoning Action: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve MARV 2012-10, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Wilson, seconded by Ms. Roche-Phillips, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve the requested landscape and parking variances, for the reasons provided by staff, subject to the seven conditions as listed in the staff recommendation.

Development Plan Action: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve ZDP 2012-52, subject to the 12 revised conditions as recommended by staff.

Newtown Pike Ordinance: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-0 (Beatty, Berkley, and Brewer absent) to accept the staff's recommendation on the Newtown Pike Ordinance requirements, for the reasons provided by staff in their report.

VI. COMMISSION ITEMS

VII. STAFF ITEMS

- A. THE COLONY NEIGHBORHOOD ZONE CHANGE INITIATION REQUEST – The staff has received a request from the The Colony Neighborhood Association for Planning Commission initiation of an ND-1 overlay zone for properties on Colonial Drive; John Alden Lane; Mayflower Lane; Standish Way; and Versailles Road. This request was reviewed by the Zoning Committee at their July 5, 2012, meeting.

Ms. Wade noted that the staff had distributed to the Commission members copies of a map detailing the neighborhood response to the postcard survey, and an exhibit submitted by the neighborhood association. She said that this request was submitted by Old Colony Residents, Inc. for the Colony neighborhood, which encompasses 72 parcels located on the south side of Versailles Road, just inside the New Circle Road interchange. Access to the neighborhood is located on Versailles Road, near that roadway's intersection with Bordeaux Drive.

Ms. Wade stated that the neighborhood association had completed the required study, the results of which had been distributed to the Commission members. She added that this request was presented to the Zoning Committee at their meeting three weeks ago, with neighborhood association representatives in attendance. The staff completed the required ND-1 postcard mailing to the 72 properties proposed to be included in this request. Of those 72 sent, approximately 2/3 were returned: some 67.5% were in favor of the three restrictions proposed; 32.5% were opposed. Ms. Wade explained that one of the parcels, which is situated in the middle of the neighborhood, is listed on the National Register of Historic Places as a Landmark Property. Article 29 of the Zoning Ordinance prohibits the inclusion of a property in an ND-1 request if it has been listed on the National Register as part of a historic district. The parcel in question is not technically considered part of a historic district. The intent of that portion of the Zoning Ordinance was to prevent "layers" of regulation on any one property. However, in this instance, the owner of that parcel supports the proposed ND-1 zoning, and the staff does not believe that any of the proposed restrictions would run contrary to the National Register requirements. Ms. Wade noted that this issue was open to interpretation, and that the Planning Commission could exempt that parcel from this request if they so chose.

Ms. Wade added that the staff was contacted one day prior to this meeting, and notified that one property in the Colony neighborhood had been inadvertently left out of this ND-1 request. At that time, it was not possible to send the required notification letter and survey postcard to the property owner prior to today's meeting. One of the neighborhood association representatives contacted the owners of that property, which is currently vacant, to determine if they would be willing to sign a letter indicating their support for this request. However, the owners were not willing to do so, since they had not had the opportunity to review the proposed restrictions.

Ms. Wade stated that the Old Colony Residents, Inc. had held neighborhood meetings and conducted a survey, per the requirements of Article 29.

Commission Questions: Mr. Wilson asked, with regard to the postcard survey completed by the staff, if it would be correct to conclude that 67.5% of the respondents were in favor of all three of the proposed restrictions. Ms. Wade answered that the postcard survey sent by the staff did not provide an option to respond separately to each individual proposed restriction. The neighborhood survey, which was completed as part of the ND-1 process prior to presenting this request to the staff, did provide residents the opportunity to address the restrictions individually. Ms. Wade added that those respondents were more supportive of the proposed fencing restrictions, but less so of the proposed floor area ratio and accessory structure restrictions. Twenty-nine households responded, with 72% of those in favor of fencing; 65.5% were in favor of the FAR requirement; and 48% were in favor of restrictions on accessory structures.

Mr. Cravens asked how many residents did not respond to the postcard survey. Ms. Wade answered that 24 households did not respond. Mr. Cravens asked how many properties are included in this request. Ms. Wade replied that there are 72 properties included, so exactly 1/3 of the property owners did not respond.

Mr. Penn asked Ms. Wade to explain the rest of the ND-1 process for the Commission. Ms. Wade explained that, should the Planning Commission choose to initiate a zone change for the ND-1 overlay, the staff will prepare the map, application, and legal description, and will prepare and send the mailing to the property owners and the 400' notification area. The staff will then establish a hearing date for the request, from which point it will follow the same process as any other zone change, being reviewed by the Zoning Committee and heard at a Planning Commission public hearing. At the Zoning Committee meeting, the staff will present their written report about the standards proposed by the neighborhood association, as well as any non-conformities that would be created by imposing the restrictions.

Neighborhood Presentation: Mike Hart, 1268 Colonial Drive, stated that he was a past president of the Old Colony Residents, Inc. Neighborhood Association. He distributed to the Commission members copies of a letter of support from Professor Clyde Carpenter, a known expert on historic preservation.

Mr. Hart stated that the property that was inadvertently excluded from this request was formerly part of the Sturgill House, which was the original homestead on the property. When the house was taken over by the heir of the original owner, the prop-

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erty was subdivided into three lots. The parcel in question, which is on John Alden Lane, has changed hands within the last 30 days.

Mr. Hart read the following into the record from Professor Clyde Carpenter's letter:

"The Colony has been described as a place of integrated diversity, where the design and placement of houses and the landscape create a unified environment of diverse integrity wherein individual structures display mutual respect for the overall image and character of the neighborhood. This has been achieved through design principles found in the work of the nationally-known Frederick Law Olmsted firm, who advocated streets designed to follow the contours and terrain of land and buildings carefully sited to maintain unity of placement on individual lots so as to respect the prevailing streetscape to the neighborhood. The result is a beautiful enclave which has great integrity as a place and which is certainly worthy of preservation."

Mr. Hart stated that Old Colony Residents, Inc. began the ND-1 process over four years ago by isolating the issues that they felt most needed to be addressed. During the process, they determined that many of the possible ND-1 restrictions did not relate to The Colony. They learned that building setbacks and lot subdivisions were major issues, since residents were concerned about the possibility of someone purchasing a lot, removing the existing residence, and subdividing the property into two or three smaller parcels. The neighborhood association leaders met with Walt Whitlow, who is not in favor of the ND-1 process, where they learned more about the existing R-1A zone and its inherent restrictions. After that they were able to narrow down their list to the three restrictions currently being proposed.

Mr. Hart said that the neighborhood leadership had discovered that fencing was an issue early in the ND-1 process. Around that time, a fence was constructed on a corner lot "out of material that you can buy at Southern States." Shortly after that, in 2010, the neighborhood association conducted its required ND-1 survey to gauge the percentage of support among the property owners, and found that 74% of the respondents were at least partially in support.

Mr. Hart concluded his remarks by reading the following excerpt from Professor Carpenter's letter:

"I applaud the decision of the residents of this neighborhood to apply for ND-1 overlay zoning to ensure that the integrated diversity and the diverse but unified integrity of this special place will be maintained. The three crucial design goals cited in the application of ND-1 designation are, in my judgment, very appropriate."

Commission Questions: Mr. Penn asked if the majority of the homes in The Colony are owner-occupied. Mr. Hart answered that most of the homes are owner-occupied, and that there are also currently several vacant residences in the neighborhood. He added that the home where the fence was erected is rented. Mr. Penn asked what the average lot size is in the neighborhood. Mr. Hart answered that the lots average just over an acre in size. Mr. Penn stated that he is concerned about the initiation of this rezoning request; and that, at the public hearing, there might be as many residents present in opposition as there are in support. He said that he is attempting to determine whether the neighborhood association has put enough time and effort into the process to determine if there is actually sufficient support for the ND-1 zoning. Mr. Hart replied that he is confident that there is sufficient support for ND-1 zoning. He said that, when the survey postcards were mailed out, the neighborhood association became aware that an opposition campaign was being formed. The neighborhood association encouraged all of the property owners to return their postcards, whether in support or opposition, in order to determine a "true response." Mr. Hart stated that, at this point in the process, the neighborhood association's responsibility is to educate their neighbors on what ND-1 zoning is, and how it can protect the neighborhood. He added that one resident indicated that she wished there was a way to eliminate the problem fences and accessory structures without using ND-1 overlay zoning.

Mr. Cravens asked if there are any active deed restrictions in The Colony. Mr. Hart responded that four homes in the newer portion of the neighborhood have deed restrictions; but, for the older portion, no such restrictions are in effect. He added that Walt Whitlow, who was president of the neighborhood association at the time, authored the deed restrictions for the newer portion of The Colony, as well as the Chinquapin area.

Perry Bozarth, 1233 Colonial Drive, stated that he is the current president of the Old Colony Residents, Inc. neighborhood association. He said, with regard to Mr. Cravens' question, that, with the exception of four homes, there are no deed restrictions in The Old Colony neighborhood. The neighborhood was developed in 1947, and the original deed restrictions expired in 1977.

Mr. Bozarth said that the neighborhood association's dues are voluntary, and that they use the funds to pay for the upkeep of the landscaping and mowing. He noted that he considers The Colony to be "a piece of paradise in the middle of a very hectic corridor," and he asked the Planning Commission to initiate the requested ND-1 rezoning in order to help maintain the integrity and special character of the neighborhood.

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Citizen Opposition: Jennifer Ham-Blakely, 1228 Colonial Drive, stated that she is uncomfortable opposing this request since so many of her neighbors are also close friends. She said that she originally moved into The Colony with her parents in 1968, and that she currently lives with her husband in her childhood home. She added that she is also speaking for former neighborhood association president Walt Whitlow, who is currently hospitalized, as well as the resident of the home where the fence has drawn criticism from other neighborhood residents.

Ms. Ham-Blakely stated that the fence that caused so much concern was an "old-fashioned double-hoop" style, with cast-iron finials and custom gates, which cost more than \$7,000 to install and would not have been available to purchase at Southern States, as Mr. Hart indicated. She said that particular type of fence was typical in the 1950s, so it perfectly matched with the home, which was also constructed around that time. That home is not currently owner-occupied, but the owner has spent over \$100,000 on the property in order to improve the neighborhood.

Ms. Ham-Blakely said that she just completed her term on the neighborhood association board, on which she had served for two years. She stated she does not believe that the ND-1 process has been properly vetted, despite assurances that it would be when it was first introduced to the property owners in 2009. The Board decided in 2009 to form a dedicated committee of residents to study, meet, and educate all property owners in the neighborhood. Following an initial mailing to residents asking for interested people to serve on the committee, only 14 people indicated their interest. Ms. Ham-Blakely said that she was aware of only two other mass mailings to the entire neighborhood with regard to ND-1 zoning since that time. The first was dated November 3, 2010; it provided some background regarding the previous 2.5 years' worth of efforts in the ND-1 process, and invited residents to attend a meeting for information sharing and discussion. That informational meeting was held on November 18, 2010, with the Board having agreed in advance that no votes would be taken. A vote was taken, however, despite the fact that many residents assumed they should only attend the meeting if they needed additional information about ND-1 zoning. Ms. Ham-Blakely addressed her concerns about the vote in an email to the Board dated November 22, 2010. There were over 70 households represented at the informational meeting, but the survey indicated that nine were opposed entirely to ND-1, and only 18 favored some or all of the restrictions. The second mass mailing from the neighborhood association, on July 3, 2012, followed the LFUCG postcard survey mailing. Written on the official neighborhood letterhead, the letter directed all questions about ND-1 zoning to Mike Hart, who has been one of the most vocal proponents for the proposed ND-1 zoning. It also included the names and phone numbers of the past neighborhood association Board members who had indicated their support for ND-1 zoning. Ms. Ham-Blakely said that she was not asked if she would like to add her name and phone number to that letter to represent those who were in opposition. She added that the residents in support of ND-1 zoning, particularly Mr. Hart, have made a point of engaging their neighbors at every opportunity to inform them that additional fences similar to the one that caused such controversy would have a negative impact on the property values of the entire neighborhood.

Ms. Ham-Blakely stated that, on October 2, 2010, the Board and ND-1 subcommittee members met to discuss The Colony's ND-1 options. At that meeting, the Board president stated that it appeared that it would be difficult to reach consensus, since, after a year of work, they had been unable to develop an ND-1 proposal to present to the residents. Ms. Ham-Blakely read the following excerpt from the information submitted as part of the neighborhood's request for initiation: "For the purposes of transparency, oppositional comments are described." She said that she was one of the residents described as having been "emotional" at that meeting, but it was not noted that she was upset about the treatment of the resident who erected the fence. Also at that meeting, Walt Whitlow's comments were characterized as "complaints," but no mention was made of another resident who openly stated that he "could not stand Walt Whitlow," and stormed out of the meeting. Ms. Ham-Blakely opined that these incidents do not bear out the neighborhood association's assertion that opposing opinions were encouraged.

Ms. Ham-Blakely said that she believes that the character of the The Colony neighborhood has changed, but not due to the fence. She noted that, since the October 2010 meeting where no decision was reached about whether to seek ND-1 zoning, Mr. Whitlow has not been invited to any further meetings, despite his having previously asked to be included in all aspects of that process. Although she was a Board member, Ms. Ham-Blakely was not given the opportunity to review the ND-1 materials until after they had been submitted to the Planning staff. She said that, although the Board has insisted that the process has been open from the beginning, she does not believe that they have been entirely forthcoming about their ND-1 proposal.

With regard to Mr. Hart's comments about the level of support for ND-1 zoning in the neighborhood, Ms. Ham-Blakely said that she was not aware that a large number of residents were in support of this request. She stated that it has taken since the summer of 2009 to get fewer than half of the residents to support the proposed ND-1 restrictions, and she believes that those residents were not informed fully and objectively of the possible impacts of ND-1 zoning on the neighborhood. Preserving the neighborhood, she opined, involves more than just policing issues like the construction of a fence that was completely legal and properly permitted. Ms. Ham-Blakely noted that she also believes that some residents who oppose ND-1 zoning have not made their feelings known because they felt "beaten down" by the proponents and afraid to express their opinions. She asked that, should the Planning Commission members choose to approve this request for initiation, they take time to listen to the residents who were not able to be present at this meeting or who were too afraid to make their comments openly in front of their neighbors. Ms. Ham-Blakely concluded by saying that she believes that property owners have a right to do what they want with their property, and that the fundamental issue in this case is fairness.

Citizen Support: David Kessler, 1228 Standish Way, stated that he is the current treasurer for the Old Colony Residents, Inc. He said that he and his wife have lived in The Colony for 15 years, and they love the character of the neighborhood. They

have invested heavily in their home, and want to preserve it and the other homes in the neighborhood. Mr. Kessler said that he believes that the modest ND-1 restrictions proposed strike a good balance between preservation and personal liberty, and most of the residents of the neighborhood would be inclined to follow them. He stated that he and his wife strongly support this ND-1 proposal, and requested approval.

Mr. Kessler added, with regard to the proposed restriction on accessory structures, that the original proposal would have excluded all such structures. However, only 50% of the survey respondents were supportive of that proposal, so the restrictions were changed to allow one accessory structure on each property. Mr. Kessler noted that he believes that the ND-1 process has been completely transparent and inclusive.

Citizen Opposition: Todd Strecker, president of the Calumet Area Neighborhood Association and the Lexington-Versailles Corridor Coalition, stated that he does not live in The Colony, but he is a good friend of Walt Whitlow. Mr. Strecker stated that Mr. Whitlow is strongly opposed to this ND-1 proposal. He predicted that, should the Commission choose to initiate this ND-1 request, a large number of opponents will attend the public hearing, even though they had not spoken out at this meeting. Mr. Strecker stated that he believes that, if The Colony has existed since 1947 without the proposed restrictions in place, they should not need them now.

Citizen Support: Linda Birk, 1240 Standish Way, stated that she was the primary author of The Colony's ND-1 proposal.

Citizen Rebuttal: Mr. Hart stated that The Colony neighborhood was deed restricted when it was constructed in 1947, but those restrictions expired in 1977.

Commission Comments: Ms. Blanton stated that it appeared that this request stemmed from a neighborhood squabble that began in 2008 over the construction of an eight-foot stone fence, and continued following the construction of a wire fence. She opined that it is a poor use of taxpayer dollars to use Planning staff time to process this request, particularly since the neighborhood has not demonstrated that there is sufficient support for it, and she would not be in favor of initiating the requested zone change.

Mr. Penn stated that he did not want the Commission to be faced with making the decision to impose ND-1 overlay zoning on The Colony without sufficient support from the residents. He said that the Commission could move forward with the initiation today, but he believes that the neighborhood association will have "one heck of an uphill battle to sell it" to the residents.

Mr. Cravens agreed with Ms. Blanton and Mr. Penn, explaining that he believes that the proposed restrictions seem too minor to make it worth the neighborhood's trouble to pursue ND-1 zoning. He added that the residents might not be aware that any changes to the restrictions would require a zone change. Mr. Cravens also does not believe that there is sufficient neighborhood support for the requested ND-1 zoning.

Ms. Roche-Phillips asked if the Commission could choose to take no action on this request at this time, and have the neighborhood association re-petition the residents then return with a new proposal. Ms. Wade answered that the Commission could choose to take no action today, but that it would be appropriate for the Commission to give the neighborhood association some direction as to what that new proposal might entail.

Mr. Owens asked, if the Commission chose to take no action on this request at this meeting, what time frame the Commission should suggest for the neighborhood to resubmit the request. Ms. Wade answered that it would need to be made very clear to the neighborhood association exactly what changes the Commission was proposing. She explained that, if the Commission voted to initiate the rezoning today, the public hearing would take place in approximately two or three months, as it fit in with the other rezoning items.

Mr. Wilson asked what Ms. Roche-Phillips hoped to gain by not moving forward at this time. Ms. Roche-Phillips said that she believed there was some ambiguity in the letter sent by the neighborhood association, and that the survey numbers did not appear to be very solid. She added that it might be beneficial for the neighborhood to take a more proactive approach in another information campaign.

Mr. Wilson said that he agreed with Mr. Penn, in that the Planning Commission had no place in the middle of a neighborhood squabble. He noted that he believes that neighborhoods should be protected, so he would be willing to vote in favor of initiating this request for ND-1 zoning today, unless the Commission can develop a specific recommendation for how the neighborhood should proceed. Mr. Wilson noted that he also agreed with Mr. Penn in his belief that the neighborhood association will have an uphill battle in garnering sufficient support for the proposed ND-1 overlay, but he also believes that it is the Planning Commission's responsibility, as a quasi-judicial body, to hear these types of requests and all of the issues that go along with them. He proposed that the Commission move this request forward by initiating it today, and encouraged the neighborhood association to develop as much of a consensus as possible prior to the public hearing.

Mr. Penn said that he, too, was leaning toward initiating this request today. He asked, however, that the neighborhood association not put the Planning Commission in the position of facilitating a situation that would damage their neighborhood.

* - Denotes date by which Commission must either approve or disapprove request.

Mr. Owens stated that he, too, was in agreement that he would not relish a contentious hearing of this request. He said that the staff indicated that 2/3 of residents' respondes in support of this request, and approximately 1/3 did not respond. Mr. Owens added that he did not see any benefit in delaying this request from going forward.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 6-2 (Cravens and Blanton opposed; Beatty, Berkley, and Brewer absent) to initiate the ND-1 rezoning as requested by the Old Colony Residents, Inc. neighborhood association.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early re-hearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. MEETING DATES FOR AUGUST, 2012

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 2, 2012
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	August 2, 2012
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 9, 2012
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 16, 2012
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 23, 2012
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 29, 2012
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 30, 2012

X. ADJOURNMENT

TLW/TM/CT/BJR/BS/src

* - Denotes date by which Commission must either approve or disapprove request.